

163 537028
an. l. l. c.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1942

No. 238

THELMA MARTIN, APPELLANT,

vs.

CITY OF STRUTHERS, OHIO

APPEAL FROM THE SUPREME COURT OF THE STATE OF OHIO

FILED JULY 16, 1942.

BLANK PAGE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 238

THELMA MARTIN, APPELLANT,

vs.

CITY OF STRUTHERS, OHIO

APPEAL FROM THE SUPREME COURT OF THE STATE OF OHIO

INDEX.

	Original	Print
Proceedings in the Supreme Court of the State of Ohio.....	1	1
Petition for appeal, assignments of error, etc.....	2	1
Order allowing appeal	6	3
Praeipie for transcript of record... (omitted in printing) ..	40	
Citation	44	
Stipulation in re papers lost from original record (omitted in printing)	46	
Bond on appeal	47	
Certificate of lodgment of original bond (omitted in print- ing)	49	
Application for enlargement of time to certify record (omitted in printing)	49a	
Order enlarging time	49c	
Docket and journal entries	50	5
Judgment	52	7
Opinion of court	55	7
Motion to dismiss appeal as of right.....	56	8
Proceedings in the Court of Appeals of Mahoning County, Ohio	57	8
Assignments of error on appeal to Supreme Court of Ohio	57	8
Notice of appeal to Supreme Court of Ohio.....	59	9
Praeipie for record	61	
Memorandum decision	62	10

Proceedings in the Court of Appeals of Mahoning County, Ohio—Continued	Original	Print
Mandate of Court of Appeals.....	63	10
Amended assignment of errors on appeal from Common Pleas Court	65	12
Assignment of errors on appeal from Common Pleas Court	67	13
Proceedings in the Court of Common Pleas of Mahoning County	69	13
Praecipe for transcript (omitted in printing) ..	69	
Notice of appeal to Court of Appeals (omitted in print- ing)	70	
Journal entry—Order overruling motion for new trial (omitted in printing).....	71	
Motion for new trial	72	14
Judgment	73	15
Petition in error on appeal from Mayor's Court, City of Struthers	75	16
Record from Mayor's Court of the City of Struthers, Ohio	77	17
Notice of appeal to Court of Common Pleas.....	77	17
Notice of allowance of appeal (omitted in print- ing)	78	
Motion for new trial..... (omitted in printing) ..	79	18
Statement of evidence	80	18
Caption and appearances	80	
Testimony of—		
Albert Charles Swartzlander	81	18
Mrs. Swartzlander	84	20
Officer Landgraft	90	24
Thelma Martin	92	25
Motion to dismiss	96	27
Judgment	100	30
State warrant	101	30
Clerk's certificate (omitted in printing) ..	102	
Statement of points to be relied upon and designation of parts of record to be printed.....	104	31
Order vacating judgment, recalling mandate and noting probable jurisdiction	105	33

[fol. 1] [File endorsement omitted]

[fol. 2] **UNITED STATES SUPREME COURT**

THELMA MARTIN, Appellant,

v.

CITY OF STRUTHERS, OHIO, Appellee

**Petition for Appeal, Statement, Assignments of Error and
Prayer for Reversal—Filed May 1, 1942**

PETITION FOR APPEAL

Considering herself aggrieved by the final decision of the Supreme Court of Ohio and the judgments of the courts below, in the above entitled cause, the appellant therein hereby prays that an appeal be allowed to the Supreme Court of the United States herein, and for an order fixing the amount of the bond thereon.

STATEMENT

This case is one in which the validity of an ordinance of the City of Struthers, Ohio, known as Section 41 of Chapter 21 of Struthers City Ordinances, reading,

“It is unlawful for any person distributing hand bills, circulars or other advertisements to ring the door bell, sound the door knocker, or otherwise summon the inmate or inmates of any residence to the door for the purpose of receiving such hand bills, circulars or other advertisements they or any person with them may be distributing.”

[fol. 3] which ordinance was passed and approved by the City of Struthers, is drawn in question upon the ground that said ordinance is repugnant to the Fourteenth Amendment to the United States Constitution. The Supreme Court of the State of Ohio is the court of last resort in this cause in the State of Ohio in which a decision could be had and the decision of that court is in favor of the validity of said ordinance.

Therefore in accordance with the rules of the Supreme Court of the United States (Rule 46, paragraph 2 [28 USC, sec. 354]), appellant respectfully shows this Court that the

case is one in which under the legislation in force when the Act of January 31, 1928 (45 Stat. L. 54) was passed, to wit, under Section 237 (a) of the Judicial Code (28 USC, sec. 344), a review could be had in the Supreme Court of the United States on a writ of error as a matter of right.

The Supreme Court of the State of Ohio, court of last resort in this cause in the State of Ohio, rendered its decision herein on the 4th day of February, 1942 and by its said decision affirmed the judgment of the Court of Appeals, the Common Pleas Court of Mahoning County, Ohio, which Common Pleas Court affirmed the judgment of conviction of appellant herein. The Memorandum Decision of the said Supreme Court of the State of Ohio has not been officially reported but is of record unofficially in Volume 14 of the Ohio Bar Association Reports at page 735 and appears in the record at page —. The Memorandum Decision of the Court of Appeals appears in the record at page —, and is unofficially reported in Volume 14 [fol. 4] of the Ohio Bar Association Reports at page 44.

The order of affirmance by the said Supreme Court of Ohio, entered in the office of the Clerk of said Court on February 4, 1942, became a final judgment on February 4, 1942.

ASSIGNMENTS OF ERROR

Now come appellant in the above cause and files herewith, together with her petition for appeal, these assignments of error, and says that there are errors committed by the courts below in the record and proceedings of the above entitled cause, and for the purpose of having the same reviewed in the United States Supreme Court, make the following assignments:

First. The ordinance in question, both on its face and as construed and applied to appellant, is unconstitutional and void in that it unreasonably and unlawfully deprives appellant of freedom to worship Almighty God, Jehovah, and freedom of conscience and of press, all contrary to Section 1, Fourteenth Amendment to the United States Constitution.

Second. The ordinance in question is unconstitutional and void on its face because repugnant to Section 1, Fourteenth Amendment to the United States Constitution, in that it is unreasonable and arbitrary and makes unlawful

that which is inherently lawful, it deprives persons lawfully on the property of another for a lawful purpose, liberties and privileges secured by the Constitution.

[fol. 5]

PRAYER FOR REVERSAL

For and on account of the above errors the appellant, Thelma Martin, prays that the said judgment of the Supreme Court of the State of Ohio; and of the lower courts, hereinbefore described in the above entitled cause be reviewed by the Supreme Court of the United States and reversed, and a judgment rendered in favor of the appellant and for her costs.

Hayden C. Covington, Victor F. Schmidt, Attorneys
for Appellant.

[fol. 6]

[File endorsement omitted]

[fol. 7]

UNITED STATES SUPREME COURT

[Title omitted]

ORDER ALLOWING APPEAL—Filed May 1, 1942

Appellant in the above entitled suit and cause has prayed for the allowance of an appeal in this cause to the Supreme Court of the United States from the judgment made and entered by the Supreme Court of Ohio on the 4th day of February, 1942; and from the judgment of affirmance of the Court of Appeals of Mahoning County, Ohio, in said cause there titled, to wit, City of Struthers, Ohio, Appellee, v. Thelma Martin, Appellant.

It appearing that the appellant in her motions, briefs and assignments filed here and below originally in said cause attacked the ordinance in question on the grounds, as contended by her, that it unreasonably deprives her of freedom to worship Almighty God, freedom of conscience and of [fol. 8] press, and that it is void because discriminatory and unreasonable; all of which contentions were overruled by decisions and judgments of each of the said courts below and by the Supreme Court of the State of Ohio, previously rendered herein.

It appearing that appellant has presented and filed her petition for appeal to the Supreme Court of the United

States, a statement, assignments of error and prayer for reversal and jurisdictional statement, all within three (3) months from date of said final judgment of the Supreme Court of the State of Ohio, and from said judgment of the Court of Appeals of Mahoning County, Ohio, pursuant to the statutes and rules of the Supreme Court of the United States in such case made and provided,

It Is Now Here Ordered that an appeal be and the same is hereby allowed to the Supreme Court of the United States from the judgment of the Supreme Court of the State of Ohio and the said judgment of the Court of Appeals of Mahoning County, Ohio, in aforesaid cause as provided by law, and

It Is Further Ordered that the Clerk of the Supreme Court of the State of Ohio and of the Court of Appeals shall prepare and certify a transcript of the record, proceedings and judgment in the said cause and transmit the same to the Supreme Court of the United States so that he shall have the same in said Court within twenty (20) days from date.

[fols. 9-49c] And It Is Further Ordered that security for costs on appeal be fixed in the sum of Five Hundred (\$500.00) Dollars and appellant having presented an undertaking in the sum of Five Hundred (\$500.00) Dollars executed by the National Surety Corporation, it is further ordered that such undertaking be and the same is hereby approved and ordered filed.

Dated: May 1, 1942.

Carl V. Weygandt, Chief Justice of the Supreme Court of Ohio.

[fol. 50] IN SUPREME COURT OF OHIO, JANUARY TERM, 1941

Docket and Journal Entries

Attorneys:

Theodore T. Macejko, City Bank Bldg., Youngstown, Ohio.

E. F. Mooneyham, 1510 First Central Tower, Akron, Ohio.

On Appeal to U. S. Supreme Court:

Hayden C. Covington, 117 Adams St., Brooklyn, N. Y.

Victor F. Schmidt, Rossmoyne, Ohio.

Title of Case:

CITY OF STRUTHERS, OHIO, Plaintiff and Appellee,

vs.

THELMA MARTIN, Defendant and Appellant

Action:

Appeal from the Court of Appeals of Mahoning County.

Motion for an order directing the Court of Appeals of Mahoning County to Certify Its Record.

Memoranda of Pleadings, &c. Filed, Writs Issued, &c.

Dec. 26, 1941. Notice of Appeal and Proof of Service filed.

Dec. 26, 1941. Motion for an Order to Certify Record and Proof of Service filed.

Dec. 26, 1941. Assignments of Error and Brief of Appellant on motion (9) and Proof of Service filed.

Dec. 30, 1941. Court of Appeals Transcript and Original papers filed.

Dec. 30, 1941. Assignments of Error on Appeal as of Right and Proof of Service filed.

Dec. 30, 1941. Cause docketed on Appeal as of Right.

Jan. 26, 1942. Appellee's brief opposing motion and proof of service filed, same as 28975-28976.

[fol. 51] Jan. 26, 1942. Motion by appellee to dismiss appeal as of right, brief in support of motion, & proof of service filed.

Feb. 4, 1942. Motion for an order directing The Court of Appeals of Mahoning County to Certify Its Record. Overruled. J. 36, Page 529.

Feb. 4, 1942. Motion by Appellee to Dismiss Appeal as of Right sustained. J. 36, Page 530.

Feb. 4, 1942. Dismissed. No debatable constitutional question involved. J. 36, Page 534.

Feb. 11, 1942. Certified copy of entry sent clerk.

Feb. 11, 1942. Mandate issued.

Feb. 11, 1942. Original papers sent to clerk. 5/15/42 returned.

May 1, 1942. Petition for Appeal, Statement, Assignments of Error and Prayer for reversal filed.

May 1, 1942. Statement as to jurisdiction filed.

May 1, 1942. Statement of points to be relied upon filed.

May 1, 1942. Notice calling appellee's attention to Paragraph 3 of Rule 12 filed.

May 1, 1942. Order allowing appeal filed.

May 1, 1942. Citation issued.

May 1, 1942. Bond in sum of \$500, National Surety Corp. as surety approved and filed.

May 1, 1942. Praecept for transcript of Record filed.

May 8, 1942. Acknowledgment of service of papers filed. [fol. 52] May 16, 1942. Motion by appellee to dismiss appeal filed.

June 9, 1942. Application for enlargement of time for completion of transcript filed.

June 9, 1942. Order enlarging time for certifying transcript of Record to United States Supreme Court to July 10, 1942.

July 1, 1942. Citation returned and filed.

JOURNAL ENTRIES

28974.

Wednesday, Feb. 4, 1942. Motion for an order directing the Court of Appeals of Mahoning County to certify its record.

It is ordered by the court that this motion be and the same is hereby overruled. J. 36, Page 529.

28974.

Motion by appellee to dismiss appeal filed as of right.

It is ordered by the Court that this motion be and the same is hereby sustained. J. 36, Page 530.

JUDGMENT

28974.

Appeal from the Court of Appeals of Mahoning County.

This cause came on to be heard upon the transcript of the record of the Court of Appeals of Mahoning County, upon the motion of the appellee to dismiss the appeal, filed as of right herein, and was argued by counsel.

On consideration whereof, it is ordered and adjudged that said appeal be, and the same hereby is, dismissed for the reason no debatable constitutional question is involved in said cause.

It is further ordered and adjudged that the appellee recover from the appellant its costs herein expended, taxed at \$.....

Ordered, That a special mandate be sent the Court of Common Pleas of Mahoning County, to carry this judgment into Execution.

[fol. 53] Ordered, That a copy of this entry be certified to the Clerk of the Court of Appeals of Mahoning County, "for entry." J. 36, Page 534.

[fol. 54] Clerk's Certificate to foregoing paper omitted in printing.

[fol. 55] IN SUPREME COURT OF OHIO

City of Struthers, Appellee, v. Martin, Appellant

City of Struthers, Appellee, v. Rummell, Appellant

City of Struthers, Appellee, v. Willard, Appellant

OPINION—February 4, 1942

Supreme Court—Dismissals—No debatable constitutional question involved—Municipal ordinance—Prohibiting person distributing circulars from summoning inmate of house—Conviction of person distributing religious pamphlet—Section 11, Article I, Constitution—Article I, Amendments, and Section 1, Article XIV, Amendments U. S. Constitution.

(Nos. 28974, 28975 and 28976—Decided February 4, 1942.)

Appeals from the Court of Appeals of Mahoning County.

Mr. T. T. Macejko, for appellee.

Mr. E. F. Mooneyham, for appellants.

It is ordered and adjudged that these appeals as of right be, and the same hereby are, dismissed for the reason that no debatable constitutional question is involved.

Appeals dismissed.

Weygandt, C. J., Turner, Matthias and Zimmerman, JJ., concur.

[fol. 56]

IN SUPREME COURT OF OHIO

[Title omitted]

MOTION TO DISMISS APPEAL AS OF RIGHT

Now comes the plaintiff-appellee, the City of Struthers, right filed in the above entitled cases, for the reason that Ohio, and moves the Court to dismiss the appeals as of there is no debatable constitutional question involved in the above cases.

Theodore T. Macejko, Attorney for Plaintiff-Appellee.

[fol. 57]

IN SUPREME COURT OF OHIO

APPEAL FROM THE COURT OF APPEALS OF MAHONING COUNTY,
OHIO

[Title omitted]

ASSIGNMENTS OF ERROR

The appellant, for her assignments of error herein, alleges that the judgment of the Court of Appeals entered in the above entitled cause on the 2nd day of December, 1941 is erroneous and prejudicial to her rights, in each of the following respects:

1. Said Court erred in not holding that Section 41, of Chapter 21, Ordinances of the city of Struthers, is inapplicable to the appellant under the facts in this case.

2. Said Court erred in not holding that Section 41 of Chapter 21, Ordinances of the city of Struthers, is invalid as applied to the appellant under the facts in this case.

3. Said Court erred in finding and holding that Section 41 of Chapter 21, Ordinances of the city of Struthers, is [fol. 58] a valid exercise of the police power and does not contravene the constitutional guarantees of the appellant.

4. Said Court erred in failing and refusing to reverse the judgments of the Court of Common Pleas and of the Mayor of the city of Struthers.

E. F. Mooneyham, Attorney for Appellant.

[fol. 59] IN COURT OF APPEALS OF MAHONING COUNTY

No. 2758

[Title omitted]

NOTICE OF APPEAL

The appellant herein, who was appellant in the Court of Common Pleas and defendant in the Mayor's Court, hereby gives notice of appeal to the Supreme Court of Ohio, from the judgment rendered by the Court of Appeals on the 2nd day of December, 1941, affirming the judgments of the Court of Common Pleas and of the Mayor of the City of Struthers, Ohio, finding and adjudging this appellant guilty of violating Section 41 of Chapter 21 of the Ordinances of the City of Struthers, Ohio.

Said appeal is on questions of law and is taken to the Supreme Court:

(a) Upon appeal as of right in a case involving the constitutionality of Section 41 of Chapter 21, Ordinances of the City of Struthers, Ohio, as applied to appellant, and construction of Section 11 of Article I of the Constitution of Ohio and Section 1 of the Fourteenth Amendment to the Constitution of the United States.

(b) In a misdemeanor case on condition that a motion to certify be allowed by the Supreme Court.

And notice is hereby given that said motion to certify will be heard by the Supreme Court upon a date to be fixed by

[fols. 60-61] the Clerk of said Court who will notify counsel thereof.

(Signed) E. F. Mooneyham, Attorney for Defendant-Appellant.

The undersigned hereby acknowledges receipt of a copy of the foregoing Notice of Appeal this 20th day of December, 1941.

(Signed) Theodore T. Macejko, Attorney for Plaintiff-Appellant. (Signed) H. H. Hull, Asst. Prosecuting Attorney of Mahoning County, Ohio.

[fol. 62] IN COURT OF APPEALS OF MAHONING COUNTY,
OHIO

MEMORANDUM DECISION

"An ordinance making it unlawful for any person distributing handbills, circulars or other advertisements to ring door bells, sound door knockers, or otherwise summon the inmate of any residence to the door for the purpose of receiving such handbill or circular being distributed, is valid, and is applicable to a person who summons a resident to the door, tells the resident that she, the solicitor, is a member of a certain religious group, that some of her group are being detained by the police because of preaching their beliefs, asking the resident to protest to the police against such action, requesting the resident to contribute money to her cause and handing the resident a printed leaflet announcing religious meetings.

City of Struthers v. Martin, No. 28974;

City of Struthers v. Rummell, No. 28975;

City of Struthers v. Willard, No. 28976, G. S. R. 6079.

Appeals as of right and motions to certify record filed."

[fol. 63] IN COURT OF APPEALS OF MAHONING COUNTY

MANDATE

THE STATE OF OHIO;

Mahoning County:

At a term of the Court of Appeals, within and for the County of Mahoning in the State of Ohio, begun and held

before Hon. William M. Carter, Hon. Elmer T. Phillips, Hon. John C. Nichols, Judges, at Youngstown on the 22nd day of September, A. D., 1941, among other proceedings then and there had by and before said Court, as appears by its Journal, were the following, viz.:

No. 2758

CITY OF STRUTHERS, Plaintiff-Appellee,

vs.

THELMA MARTIN, Defendant-Appellant

This matter came on to be heard before The Honorable William M. Carter, Elmer T. Phillips and John C. Nichols, Judges of The Court of Appeals of The Seventh Judicial District, Mahoning County, Ohio, upon an appeal filed by the defendant-appellant, Thelma Martin, upon question of law, and the Court being fully advised in the premises, and after hearing the argument of counsel for the respective parties, and after submission of briefs, finds that the judgment of conviction rendered by the Court of Common Pleas was substantiated by the evidence, and that there is no error in the record or proceedings prejudicial to the rights of the defendant-appellant, and that Section 41 of Chapter 21, Struthers City Ordinances, to-wit:

[fol. 64] "It is unlawful for any person distributing hand bills, circulars or other advertisements to ring the door bell, sound the door knocker, or otherwise summon the inmate or inmates of any residence to the door for the purpose of receiving such hand bills, circulars or other advertisements they or any person with them may be distributing"

is a valid exercise of the police power and does not contravene the constitutional guarantees of the defendant-appellant.

Wherefore, it is ordered, adjudged and decreed that the judgment of the Court of Common Pleas be and hereby is affirmed and that the costs in the sum of \$— be taxed against the defendant-appellant. To all of which findings and judgment the defendant-appellant excepts.

[fol. 65] IN COURT OF APPEALS OF MAHONING COUNTY

No. 2758

[Title omitted]

AMENDED ASSIGNMENT OF ERRORS—Filed February 26, 1941

For her amended assignment of errors herein, the defendant-appellant says that there is error in the proceedings and final judgment of the Common Pleas Court manifest on the face of the record, prejudicial to the rights of the defendant-appellant, in the following particulars, to-wit:

1. The Court erred in holding that Section 41 of Chapter 21 of the Ordinances of the City of Struthers, Ohio, is applicable to the activities of the defendant-appellant as disclosed by the evidence and the record.

2. The Court erred in holding that Section 41 of Chapter 21 of the ordinances of the City of Struthers, Ohio, as applied to the activities of the defendant-appellant as disclosed by the evidence and the record, is a valid exercise of the police power and does not contravene the constitutional guarantees of the defendant-appellant.

3. The Court erred in holding that there is no error in the record of the proceedings of the Mayor's Court prejudicial to the rights of the defendant-appellant.

4. The judgment of affirmance is contrary to law.

5. The Court erred in refusing to reverse the judgment of the Mayor's Court.

[fol. 66] 6. Any and all other errors manifest on the face of the record prejudicial to the rights of the defendant-appellant.

E. F. Mooneyham, Attorney for Defendant-Appellant.

[fol. 67] IN COURT OF APPEALS OF MAHONING COUNTY, OHIO

(Title omitted)

ASSIGNMENT OF ERRORS—Filed January 30, 1941

Now comes the Defendant-Appellant and says that, at the January Term, 1941, of the Common Pleas Court of Mahoning County, Ohio, in an action therein pending wherein the Appellant was the Defendant and the Appellee was the Plaintiff, said Court handed down a decision in favor of the Plaintiff-Appellee and against the Defendant-Appellant; and that the Defendant-Appellant is unable to plead further; that a transcript of the docket and Journal Entries and the original pleadings and papers have been filed in this proceeding, and that there was manifest error in said record and proceeding prejudicial to the rights of this Defendant-Appellant in the following respects, to-wit:

1. Irregularity in the proceedings of the Court by which the Defendant-Appellant was prevented from having a fair trial;

2. That the verdict is not sustained by evidence and is contrary to law;

3. For any and all errors manifest upon the face of the record whereby this Defendant-Appellant was not granted a fair trial and for any and all errors manifest upon the face of the record that was prejudicial to the rights of the defendant-Appellant.

[fols. 68-71] 4. Excluding evidence of the Defendant-Appellant manifest to the Defendant-Appellant's case.

5. For any and all errors manifest upon the face of the record.

Respectfully submitted, — —, Attorney for Defendant-Appellant.

[fol. 72] IN COURT OF COMMON PLEAS OF MAHONING COUNTY,
OHIO

Case No. 108455

CITY OF STRUTHERS, Plaintiff-Appellee,

vs.

THELMA MARTIN, Defendant-Appellant

MOTION FOR NEW TRIAL

Now comes the Defendant-Appellant and respectfully moves the court to vacate and set aside the findings of the court heretofore rendered in this cause; to grant a new trial herein for the following reasons, to-wit:

1. Irregularity in the proceedings of the Court by which the defendant-appellant was prevented from having a fair trial.

2. That the verdict is not sustained by sufficient evidence and is contrary to law.

3. For any and all errors manifest upon the face of the record whereby this defendant-appellant was not granted a fair trial and for any and all errors manifest upon the face of the record that was prejudicial to the rights of the defendant-appellant.

4. Excluding evidence of the defendant-appellant manifest to the defendant-appellant's case.

5. For any and all errors manifest upon the face of the record.

Respectfully submitted (Signed) K. H. Powell,
Ralph B. Schwartz, Attorneys for defendant-appellant.

[fol. 73] IN COURT OF COMMON PLEAS OF MAHONING COUNTY,
OHIO

Case No. 108455

CITY OF STRUTHERS, OHIO, Plaintiff-Appellee,

vs.

THELMA MARTIN, Defendant-Appellant

JUDGMENT

This matter came on to be heard before the Hon. Judge Erskine Maiden upon a petition in error filed by defendant-appellant wherein said defendant-appellant requested the Court to set aside the judgment of the Mayor's Court of the City of Struthers, Ohio, for the following reasons:

1. Irregularity in the proceedings of the Court by which the defendant was prevented from having a fair trial.

2. That the verdict is not sustained by sufficient evidence and is contrary to law.

3. That the judgment of the Court was rendered under passion and prejudice whereby this defendant was prevented from having a fair trial.

4. For any and all errors manifest upon the face of the record whereby this defendant was not granted a fair trial.

5. Excluding evidence of the defendant manifest to the defendants's case.

After being fully advised in the premises, and after the submission of briefs by both of the parties and a transcript of the evidence of the lower court, the Court finds that the proceedings in the Mayor's Court were substantiated by the evidence and that there is no error in the record or proceedings prejudicial to the rights of this appellant and [fol. 74] that Section 41 of Chapter 21 of Struthers City Ordinances, to-wit:

"It is unlawful for any person distributing hand bills, circulars or other advertisements to ring the door bell, sound the door knocker, or otherwise summon the inmate or inmates of any residence to the door for the purpose of

receiving such hand bills, circulars or other advertisements they or any person with them may be distributing."

is a valid exercise of the police power and does not contravene the constitutional guarantees of defendant-appellant.

Wherefore, it is Ordered, Adjudged and Decreed that the judgment of the lower court be and hereby is affirmed and that the costs in the sum of \$— be taxed against defendant-appellant.

E. Maiden, Jr., Judge. O. K. K. H. Powell, T. T. Macejko.

Clerk's Notice of Entry of Judgment.

Jan. 28, 1941. Trial to Court. Judgment of lower Court affirmed at costs of Deft. Appellant. See Journal 192A Page 197.

[fol. 75] IN COURT OF COMMON PLEAS OF MAHONING COUNTY,
OHIO

[Title omitted]

PETITION IN ERROR

Now comes the defendant-appellant and says that on the 11th day of July, 1940, in the Mayor's Court of the City of Struthers, Ohio, in a criminal action therein pending wherein the appellant was the defendant and the appellee was the plaintiff, said plaintiff-appellee recovered a verdict against this defendant-appellant. That a transcript of the docket or journal entries and the original pleadings and papers have been filed in this proceeding, and that there is error in said record and proceedings prejudicial to the rights of this appellant in the following respects, to-wit:

1. Irregularity in the proceedings of the Court by which the defendant was prevented from having a fair trial.

2. That the verdict is not sustained by sufficient evidence and is contrary to law.

3. That the judgment of the Court was rendered under passion and prejudice whereby this defendant was prevented from having a fair trial.

[fol. 76] 4. For any and all errors manifest upon the face of the record whereby this defendant was not granted a fair trial.

5. Excluding evidence of the defendant manifest to the defendant's case.

Wherefore, defendant prays that the verdict of the Mayor's Court be set aside, the charges against this defendant be dismissed and that she be released from her bond as placed in the Mayor's Court, and the proceedings below be set aside and held for naught.

(Signed) K. H. Powell, Attorney for Defendant.

PRAECIPE

To the Clerk:

Issue Summons and serve a copy of the foregoing Petition in Error to the Sheriff of Mahoning County to be by him served upon W. A. Strain as Mayor of the City of Struthers, Ohio, defendant in error.

(Signed) K. H. Powell, Attorney for Defendant-Appellant.

[fols. 77-79] BEFORE THE HONORABLE W. A. STRAIN, MAYOR
OF THE CITY OF STRUTHERS, OHIO

CITY OF STRUTHERS, Plaintiff-Appellee,

vs.

THELMA MARTIN, Defendant-Appellant.

NOTICE OF APPEAL

Now comes Thelma Martin, appellant, and defendant in the Mayor's Court of the City of Struthers, Ohio, and hereby gives notice or appeal to the Court of Common Pleas of Mahoning County, Ohio, on questions of law from a verdict by the Mayor's Court of the City of Struthers, Ohio, in the above entitled cause on the 11th day of July, 1940, in favor of the City of Struthers; Ohio, appellee in said Mayor's Court, and against this appellant and defendant in said Mayor's Court.

K. H. Powell, Attorney for Appellant.

Copy of the foregoing Notice of Appeal delivered to counsel for plaintiff-appellee this — day of July, A. D., 1940.

[fol. 80] BEFORE THE HONORABLE W. A. STRAIN, MAYOR
OF THE CITY OF STRUTHERS, OHIO

CITY OF STRUTHERS, OHIO, Plaintiff,

vs.

THELMA MARTIN, Defendant

Statement of Exidence

Theodore T. Macejko, Counsel for Plaintiff.

K. H. Powell, Counsel for Defendant.

[fol. 81] The Witness is sworn.

By Mr. Macejko:

Q. Will you state you- full name to the Court?

A. Albert Charles Swartzlander.

Q. Where do you live?

A. 724 Creed Street.

Q. How long have you resided at that Creed Street residence?

A. 14 years.

Q. How old are you?

A. 14 years old.

Q. What grade are you in?

A. 9th.

Q. You are a freshman, are you?

A. Yes, sir.

Q. Are you going to school this summer?

A. Yes, sir.

Q. Albert, in the afternoon of July 7th were you summoned to the door of your home by anyone?

A. Yes, sir.

Q. Was it by the ringing of the door bell or otherwise?

A. By a knock.

Q. Where were you seated?

A. I was sitting in the living room in a chair.

Q. Was it one knock or a series of knocks?

A. One knock.

Q. Can you tell the Court whether or not that person is here now?

A. I am not sure. She had some kind of hat on and glasses.

[fol. 82] Q. What type of hat?

A. A yellow hat with a big feather or—

Q. What, if anything, did she tell you when you came to the door?

A. She asked if my mother or father was at home.

Q. What did you say?

A. I said my mother was home.

Q. What did you do?

A. I called my mother to the door.

Q. Did you stay there with your mother?

A. Yes, sir.

Q. What took place?

A. Well, first she asked my mother if she would call and ask the police station if they would release her friends and then she asked if she would like to contribute to this type of religion.

Q. Did she hand you- mother anything?

A. She handed my mother a little slip of paper. I don't know what it was and my mother took it.

Q. Could you tell the Court what that slip of paper was? Albert, handing you this slip of paper which is marked for identification as "City's Exhibit A" in the Martin case, was it the type of paper that was handed to your mother by Mrs. Martin here?

A. Yes, sir.

Mr. Powell: I object to the last part of the question. [fol. 83] You assume a little too much. You said by Mrs. Martin here. I don't object to the type of paper handed to the mother. I will go along on that, but the defendant has not been identified as that person.

The Court: Sustained.

Q. Did you read the pi-ce of paper she handed to your mother?

A. Yes, sir.

Q. Do you know what color it was?

A. It had orange on it.

Q. If I handed you this, could you tell the Court if the piece of paper was something similar to that?

A. It was something similar.

Q. And where did this take place?

A. At my home.

Q. Where is that?

A. On Creed Street.

Q. In the City of Struthers?

A. Yes.

Q. County of Mahoning?

A. Yes.

Q. State of Ohio?

A. Yes.

Q. What if anything took place after this act?

A. She turned around and walked off the porch and the cruiser car came and they called to her and motioned and waited.

[fol. 84] Q. Did she go into the car?

A. At first she didn't notice them and they called again and she turned around.

Q. Was this directly in front of your home?

A. Yes, sir.

Q. In the meantime, while this particular person was on the porch of your home, did she remove her glasses?

A. No.

Q. Was there anyone or anybody with this woman at your home?

A. No, sir, nobody at our house.

Q. What time was this, Albert?

A. 4:30 or 5:00 o'clock.

Q. Where was mother when you summoned her to the door?

A. In the kitchen.

Q. That is all.

Mr. Powell: That is all. No cross-examination.

The witness is sworn.

By Mr. Macejko:

Q. What is your name?

A. Mrs. Swartzlander.

Q. Where do you reside?

A. 724 Creed Street.

Q. Mrs. Swartzlander, I will ask you whether or not last Sunday afternoon anyone paid you a visit?

A. Yes, sir.

Q. Would you mind tell- the Court by whom?

[fol. 85] A. A woman representing Jehovah's witnesses.

Q. Can you identify that lady this afternoon?

A. Yes, sir. Although I will say she had on sun glasses, which more or less disguised her, but I can truthfully say that that is the lady right there.

Q. Mrs. Swartzlander, when you came to the door, will you state just what took place if anything?

A. I came to the door and she told me she was representing Jehovah's Witnesses and I told her that I was not interest-. She, at that time, had some booklets in her hand and, when I told her that I was not interested, she handed me a slip together with a circular. At that time, a car pulled up in front of our home. Then she told me that a number of them were in jail and would I call the Chief of Police and ask that their workers might be released. Then she walked off the porch and the officers——

Q. Were the officers directly in front of your home?

A. He called to her as soon as she left my lawn and then he called again. They were by our driveway.

Q. Did you accept any literature she handed to you?

A. I accepted a slip or booklet that she shoved in the door and I couldn't do much more than take it, but I was not interested in the booklet. I don't care to talk to everybody. I believe in the worship of God, but I don't — anybody to tell me how.

Q. Mrs. Swartzlander, handing you what is marked for [fol. 86] identification as "City's Exhibit A" in the Martin case, I will ask you whether or not this, or something similar to this, is the slip handed to you?

A. That is exactly the kind of slip handed to me: "Religion as a World Remedy" and I tore it up.

Q. Did you read it?

A. Just those headlines.

Q. This took place at your home?

A. Yes, sir.

Q. Where is that?

A. 724 Creed Street.

Q. In the City of Struthers?

A. Yes, sir.

Q. County of Mahoning?

A. Yes, sir.

Q. State of Ohio?

A. Yes, sir.

Q. Do you know the officer that arrested this defendant?

A. I know him to see him.

Q. Do you know him by name?

A. His name is Godfrey.

Q. Were there two officers, or one officer?

A. There was one officer at the time and I know him very well to see him.

By Mr. Powell:

Q. How was the woman dressed?

A. She had a green and black st-iped dress and a large [fol. 87] straw hat and sun glasses.

Q. What color was the hat?

A. I believe it was sort of yellow straw.

Q. Did you talk with your son about the description of this woman?

A. No, sir.

Q. Did you talk with your son about what you would testify to before you came down here?

A. No, sir. I did not.

Q. Did you talk to anyone?

A. No, sir.

Q. Did you receive the pamphlet from the woman who was at your door?

A. I did.

Q. You were not interested you told her?

A. That is what I told her.

Q. You read the face of the pamp-let that says "Religion as a World Remedy"?

A. That is all.

Q. You tore it up?

A. Yes, sir.

Q. You also told us that you were not interested for the reason that every person has a right to worship God as he pleases?

A. Absolutely. I don't believe that anyone needs to be sent from door to door to tell us how to worship.

Q. You did tell us that they had a right to worship their God as they please?

[fol. 88] A. Yes.

Q. But you are absolutely and positively sure that this woman is the woman who was at your door?

A. Yes.

Q. No one else but this woman?

A. No.

Q. Did you complain to the police about them being there?

A. No, sir. The police drove up as she left.

Q. Did you enter any complaint?

A. No.

Q. Did you ever complain about any person coming and rapping on your door to hand you literature of any kind?

A. I have never complained to the officers, but I have to others. I get very much disgusted going to the door—

Q. Sure, we all do.

A. And they get just about the same answer from me. I was called to the door by one of these workers quite a while back and he told me that I was doomed to go to hell because I would not let this literature in my home for my children to read.

Q. You did not believe what they told you?

A. Positively not.

Q. Neither do I, but you have no objection if they believe that way, do you?

A. Not so long as they keep it to themselves. That is their belief.

Q. But whatever was said at your home by these people [fol. 89] was always pertaining to what you and I would probably call religion.

Mr. Macejko: I object.

The Court: Overruled.

Q. Well, it is not religion as I see religion.

Q. No, but was it your idea that they thought it was religion. Maybe you and I may not agree with them. I am frank to say to you, Mrs. Swartzlander, that I am not a member of Jehovah's Witnesses. They may think different than I do and I may think different than they do, but I am trying to make this one particular point. They came there and talked about religion to you, didn't they?

A. Absolutely not. Not what I would call religion.

Q. Well, let's take this defendant for a moment. She asked you to call the police, that is right, isn't it?

A. Yes, sir.

Q. And she gave you this little notice?

A. Yes, sir.

Q. Did she say anything else to you?

A. No, that is all I can remember, excepting that she was representing Jehovah's Witnesses.

Q. And that she was a Jehovah's Witness?

A. Yes, sir. She said she was representing Jehovah's Witnesses and I told her I was not interested.

[fol. 90] Q. For the purpose of refreshing your recollections—lots of times we all have to be refreshed in our recollections, do you recall whether or not this woman said to you, "I am a member of Jehovah's Witnesses—" and then went on a little bit and told you about it?

A. No, sir, not to the best of my knowledge.

Q. That is all.

The Witness is Sworn.

By Mr. Macejko:

Q. What is your name?

A. Landgraft.

Q. What is your occupation?

A. A Policeman.

Q. How long have you been a policeman?

A. About five years.

Q. Officer Landgraft, I will call your attention to Sunday, July 7th, and I will ask you whether or not you had the occasion to make a call in the vicinity of 724 Creed Street?

A. I did.

Q. Will you tell the Court what the nature of that call was?

A. I was cruising around in the car and I got a call over the radio about people ringing door bells and I turned into Creed Street and I found who I was after.

Q. Officer, could you possibly point out in this court room this afternoon the party or the parties that you picked up?

A. The defendant.

[fol. 91] Q. You are positive that this is one of the parties you arrested?

A. Yes, sir.

Q. What did you do after that?

A. She was coming down off the porch and I called to her.

Q. Had you noticed her talking to someone on the porch when you got there?

A. The people was on the porch.

Q. And she was coming down off the steps?

A. Yes.

Q. You motioned her over to the car?

A. I called her and went up to her and told her that she was under arrest.

Q. Did you notice any type of literature?

A. She had some literature.

Q. Was it printed, or what was the nature of it?

A. They were small booklets.

Q. Officer, could you state if you had occasion to handle these in her presence?

A. I took them down to the desk.

Q. When she was booked?

A. When she was booked.

Q. Did you actually fill out the information?

A. The desk man did that.

Q. What was that?

A. Officer Birch.

[fol. 92] Q. Did you handle the pamphlets?

A. I did.

Q. That is all.

Mr. Powell: Let it be admitted that officer Birch did docket her.

Mr. Macejko: Mr. Powell, after introducing these exhibits, we are about ready to rest.

Mr. Powell: I make a motion at this time that this defendant be discharged for the reason that from the testimony of the witness who has testified that she did give to her a pamphlet calling her attention to a religious meeting, and that the section of the ordinance does not apply to the distribution of religious literature, and cannot apply to the distribution of religious literature, and that it can apply to the distribution of personal or commercial literature.

The Court: Overruled.

The Witness is sworn.

By Mr. Powell:

Q. What is your name?

A. Thelma Martin.

Q. Where do you live?

A. Rogers.

Q. Rogers, Ohio.

A. Yes, sir.

Q. That I believe is South of Youngstown on Route 7?
[fol. 93] A. Yes, sir.

Q. Directing your attention to the 7th day of July, I will ask you whether or not you were arrested in the City of Struthers?

A. If that was Sunday, I was.

Q. Yes, you were docketed and booked in the Struthers Police Department?

A. Yes, sir.

Q. I will ask you if you are a Jehovah's Witness?

A. I am one of Jehovah's Witnesses.

Q. And I will ask you whether or not it is your christian belief that in order to spread the word of God that it is necessary for you to do witness work from house to house and door to door?

Mr. Macejko: Object.

The Court: Sustained.

Q. Counsel now desires to have the witness answer that question for the purpose of the record.

A. That is right because that is the way Jehovah and the apostles did it and the apostle Paul said "I have taught you publicly and from door to door."

Q. Are you an ordained minister of the Gospel?

A. I am.

[fol. 94] Mr. Macejko: I object to all of this proceeding in reference to religion.

Q. And as such, is it your belief that it is necessary for you as a minister to do witness work among the people.

A. It is absolutely necessary because God has so commanded it.

Q. I will ask you whether or not on the 7th day of July you were carrying on your work as an ordained minister in doing witness work in the City of Struthers.

A. Yes.

Q. And I will ask you whether or not you were doing such work when you were at the home of Mrs. Swartzlander.

A. Yes, sir.

Q. Now, tell the Court what you did in order to further your preaching work at the Swartzlander home.

A. Well, I can almost recall word for word what I said.

Q. Start at the sidewalk and go in.

A. I was on the sidewalk and I went on the porch and the door was open and perhaps I did knock on the screen before the boy come.

Q. Did you knock.

A. I expect I did.

Q. Will you say that you did not knock.

A. I said I may have knocked on the screen, but someone met me right at the door. You can't remember always. I do remember that somewhere a boy called his mother, so, [fol. 95] it may be that it was this place. I told this woman that I was a member of Jehovah's Witnesses and some of our members were in jail, together with five children, and that, if she was in favor of freedom and in seeing justice administered at all, I would request that she call the Chief of Police and demand that they be released. And then I offered her the leaflet and told her it was a booklet on religion and that it has some very timely matters in it and she said she was not interested. I had all ready passed the leaflet to her and I went away.

Q. Did she accept the leaflet?

A. She did.

Q. The leaflet is the leaflet that has been marked and shown here?

A. One like it, if not the same one.

Q. And all of this work and all of this conversation on the porch of Mrs. Swartzlander was in furtherance of your preaching the Gospel as you interpret the Bible?

A. Positively.

Q. And the word of God.

A. Yes.

Q. That is all.

Mr. Macejko: No cross-examination. I am introducing "City's Exhibit A."

Mr. Powell:

[fol. 96]

MOTION TO DISMISS

I move the Court for the dismissal of the defendant for the reason that the ordinance of the City of Struthers cannot be applicable as against any person in the furtherance of the practice of religion and I read to you from the Constitution of the United States: "Congress shall make no law respecting an establishment of religion, or prohibiting

the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the government for a redress of grievances." In furtherance of that, I desire to call the Court's attention to the case of *People vs. Johnson*, 191 N. Y. State, Supreme Court, 750, to that part of the Court's finding when it says, "The ordinance within reasonable limits is a proper one." And this is a proper ordinance. I have no object to it and it should be sustained, but no ordinance no matter how worthy its integrity, should be permitted in any way to curtail any of the fundamental rights of citizens. This is the case of *State of Idaho vs. H. D. Morris*, 155 Pacific, 296. The Court says: "To place upon the statute under consideration the construction asked for by appellant, and to hold that the use of a motion picture machine on Sunday for the purpose to which it was put by the respondent and his associates, in keeping open or operating a motion picture show in violation of the stat-[fol. 97] ute would be to improperly invoke the police power of the state * * *". Let me explain that. "Let us suppose there is a law in the City of Struthers to prevent a motion picture showing. To open that picture show would be in violation of the ordinance no matter whether they let people in free or not because the ordinance says you cannot open a theater and show pictures. Now, let us suppose that I decided to open that picture show on Sunday and show a religious picture. You cannot stop it. Still in the letter of the law, I am violating that ordinance. That is what this case is about, and the Court herein this case says that the letter of the law was violated, but you cannot enforce it as I know that any person in the display of religious material is in the practice of his religion. I go further. "Such a construction would also bring the statute into conflict with Section 4, Article 1, and Section 19, Article 20 of the Constitution, for thereby religious liberty would be denied." The Court—

Mr. Macejko: That applies to public places.

Mr. Powell: It makes no difference.

Mr. Macejko: It is certainly different than in a persons home.

[fol. 98] Mr. Powell: Yes, because it is an unreasonable exercise of police power. Get my point, Your Honor, it is my belief, and I am sincere in my belief, that, if I were

doing what these people were doing, in carrying on my religious work, it would be just the same as we go to church on Sunday. If it my belief of the Bible to go from door to door and spread the word of God, as long as I don't distribute literature that is improper, as long as I don't violate the health laws, or the laws of morality, no law can touch me while I am doing that. I can be ordered off the porch by the individual that is residing there. I am giving the Court what I understand is the interpretation of the laws and I am citing them to the Court. There are cases in the Supreme Courts of Idaho, New York and others. Your ordinance is good if exercised against individuals distributing commercials, but not as against religious literature. Now, these illustrations or unreasonable exercise of power against the fundamental laws of our country, freedom of worship and freedom of speech, are all in point with the cases before this Court. My cases are in all fours with them.

Mr. Macejko: You mean the police have no authority on religious matters.

Mr. Powell: You can't touch them on religion.

[fol. 99] Mr. Macejko: In private homes.

Mr. Powell: You can't touch them on religion. This says "one who rings the door bell or knocks." One comes to my home and she rings the door bell and I say, "Come in and sit down." And she says, "I am a member of Jehovah's Witnesses. I am a Jehovah's Witness" * * *. And I say, "Sit down and lets discuss Jehovah's Witnesses." Is that violating the law?

Mr. Macejko: Suppose you refuse.

Mr. Powell: You answer my question.

Mr. Macejko: Not as long as there is an invitation.

Mr. Powell: They have knocked first. I say you can violate the letter of the law within violating the law itself. I say to you, if I were an individual distributing something personal there would be no question about it. If I am someone passing out literature which is commercial in its nature, there is no question about it. I am now asking the Court for the discharge of the defendant.

The Court: Overruled.

Will the defendant please stand. Do you have anything [fol. 100] to say before I pass judgment.

Mr. Powell: We have nothing to say, Your Honor.

JUDGMENT

The Court: I find you guilty and impose a fine of Ten Dollars (\$10.00) and costs.

I do hereby certify that the above and the foregoing is a full, true, and correct transcript of all the testimony introduced, and proceedings had in the taking of the above named hearing, given in the order as herein appears, and as shown by stenographic notes taken by me at said time.

(Signed) Hillery Pearl, Notary Public.

[fol. 101]

WARRANT

THE STATE OF OHIO,
Mahoning County, ss:

Before me, W. A. Strain, Mayor of the City of Struthers, Poland Township, said County, personally came John J. Hosa who, being duly sworn according to the law, deposeth, and saith that on or about 7th day of July, 1940, at the County aforesaid: That one Velma Martin did violate City Ordinance, to-wit: "It shall be unlawful for any person distributing hand-bills, circulars or other advertisements to ring the door bell, sound the door knocker, or otherwise call the inmate or inmates of any residence to the door for the purpose of receiving such hand-bills, circulars or advertisements they or any person with them may be distributing", Contrary to City Ordinance, Chapter 21, Section 41, by knocking on the door of one of Mrs. Swartzlander at 724 Creed Street, in the City of Struthers, County of Mahoning, State of Ohio, and did then and there distribute hand bills contrary to said ordinance, contrary to the form of the ordinance in such case made and provided, and against the peace and dignity of the State of Ohio. And further this deponent saith not.

John J. Hosa.

Sworn to and subscribed to before me this 8th day of July, 1940. W. A. Strain, Mayor.

THE STATE OF OHIO,
Mahoning County, ss:

To the Chief of Police of Said City, Greeting:

Whereas, complaint has been made before me, W. A. Strain, Mayor of the City of Struthers, of the County afore-

said, upon the oath of John J. Hosa that Velma Martin, late of the County aforesaid, did on or about the 7th day of July, 1940, at the County aforesaid: That one Velma Martin did violate City Ordinance, to-wit: "It shall be unlawful for any person distributing hand-bills, circulars or other advertisements to ring the door bell, sound the door knocker, or otherwise call the inmate or inmates of any residence to the door for the purpose of receiving such hand-bills, circulars or advertisements, they or any person with them may be distributing", Contrary to City Ordinance, Chapter 21, Section 41, by knocking on the door of one Mrs. Swartzlander at 724 Creed Street, in the City of Struthers, County of Mahoning, State of Ohio, and did then and there distribute hand bills contrary to said ordinance.

These are therefore to command you to take the said Velma Martin if She be found in your County, or if She shall have fled, that you pursue after her into any County in the State, and There take and safely keep, so that you have her body forthwith before me, Mayor of the City of Struthers, to answer to said complaint, and be further dealt with accordingly to law. And you are also required to subpoena the said complainant, and also ——— to appear and give evidence relative to the subject matter of said complaint, when and where you have said defendant.

Witness my hand, and seal this 8th day of July, A. D. 1940.

W. A. Strain. (Seal.)

[Endorsed:] State Warrant. The State of Ohio against Velma Martin, Box 87, Rodgers, Ohio.

[fols. 102-103] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 104] UNITED STATES SUPREME COURT

STATEMENT OF POINTS TO BE RELIED UPON—Filed July 16, 1942

Comes now appellant in the above entitled cause and states that the points upon which she intends to rely in this Court in this cause are as follows:

Point 1. The ordinance in question, both on its face and as construed and applied to appellant, is unconstitutional

and void in that it unreasonably and unlawfully deprives appellant of freedom to worship Almighty God, Jehovah, and freedom of conscience and of press, all contrary to Section 1, Fourteenth Amendment to the United States Constitution.

Point 2. The ordinance in question is unconstitutional and void on its face because repugnant to Section 1, Fourteenth Amendment to the United States Constitution, in that it is unreasonable and arbitrary and makes unlawful that which is inherently lawful, it deprives persons lawfully on the property of another for a lawful purpose, liberties and [fol. 105] privileges secured by the Constitution.

Hayden C. Covington, Victor F. Schmidt, Attorneys
for Appellant.

[fol. 105a] [File endorsement omitted.]

[fols. 106-107] [Stamp:] Office of the Clerk, Supreme Court,
U. S., Feb. 8, 1943

UNITED STATES SUPREME COURT

DESIGNATION OF PARTS OF THE RECORD TO BE PRINTED—Filed
February 8, 1943

To the Clerk of the Supreme Court of the United States:

You will please print each of the documents in the record in the above entitled and numbered case now on file in your office save and except the documents designated below which should not be printed:

1. Stipulation and Acknowledgment.
2. Bond on Appeal.
3. Praecipe for Record.
4. Citation on Appeal.
5. Application for Enlargement of Time to Appeal.
6. Order on Application for Enlargement of Time to Appeal.
7. Praecipe appearing at Record page 61.
8. Praecipe appearing at Record page 69.
9. Notice appearing at Record page 70.
10. Journal Entry appearing at Record page 71.

11. Motion appearing at Record page 75.
12. Motion appearing at Record page 78.
13. Motion appearing at Record page 79.

Dated February 5, 1943.

Hayden C. Covington, Attorney for Appellant.

[fol. 107a] [File endorsement omitted.]

[fol. 108] SUPREME COURT OF THE UNITED STATES

ORDER NOTING PROBABLE JURISDICTION—February 1, 1943

Upon reconsideration, the judgment entered herein October 12, 1942, is vacated, the mandate is recalled, and probable jurisdiction is noted.

Endorsed on cover: File No. 46,732. Ohio, Supreme Court. Term No. 238. Thelma Martin, Appellant, vs. City of Struthers, Ohio. Filed July 16, 1942. Term No. 238, O. T., 1942.

(4609)